

# NATIONAL RAILWAY EQUIPMENT CO.



HOME OFFICE: 14400 S. ROBESY STREET · P. O. BOX 2270 · DIXMOOR, ILLINOIS 60426  
TELEPHONE (708) 388-6002 FAX (708) 388-2487

December 27, 2007

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

RECORDATION NO. 27343 FILED

JAN 10 '08

1-05 PM

SURFACE TRANSPORTATION BOARD



Attn: Equipment Recordation

To Whom It May Concern:

I have enclosed for recordation, pursuant to the provisions of 49 U.S.C. 11301, an original and one counterpart of the memorandum of lease agreement and the schedule of equipment for a locomotive lease agreement dated December 6, 2007, a primary document under the Board's recordation regulations.

The names and addresses of the parties to the enclosed document are as follows:

Lessor: National Railway Equipment Co.  
14400 S. Robey St.  
Dixmoor, IL 60426

Lessee: Modesto & Empire Traction Co.  
641 S. McClure Road  
Modesto, CA 95353

A description of the equipment covered by the Lease Agreement is as follows:

NREC 2GS-14B N-ViroMotive Switcher Locomotive, bearing road # NREX2007

A short summary of the document to appear in the index is as follows:

"Locomotive Lease Agreement"

Also enclosed is a check in the amount of \$34 payable to the Surface Transportation Board to cover the required recordation fee for the attached agreement.

Please date-stamp and return an original copy after recordation to:

Kristina Buchthal

National Railway Equipment Co.  
14400 South Robey Street  
P.O. Box 2270  
Dixmoor, IL 60426

Sincerely Yours,

NATIONAL RAILWAY EQUIPMENT CO.

By:   
Kristina Buchthal

JAN 10 '08

1:05 PM

SURFACE TRANSPORTATION BOARD

**LOCOMOTIVE LEASE AGREEMENT**

**THIS LOCOMOTIVE LEASE AGREEMENT** ("Lease"), entered into as of this 6 day of December 2007, between the National Railway Equipment Co., an Illinois corporation, ("LESSOR"), and Modesto & Empire Traction Company, ("LESSEE").

**LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:****1. LEASE AND LEASED PROPERTY**

Lessee hereby leases from Lessor, the Locomotive ("Locomotive" or "Locomotive"), together with the parts, accessories, attachments and devices, if any, now or hereafter affixed thereto, as described in Schedule "A" attached to and made part hereof.

**2. TERM**

The term of this Lease for the Locomotive shall be the fixed term set forth in Schedule "A", commencing on the date such Locomotive is accepted by Lessee ("Commencement Date"). In the event of default of the lease, Lessee shall affect prompt delivery of the Locomotive to Lessor at an interchange point on Lessee's line designated by Lessor.

**3. RENTAL**

A. The rental payable shall be the sum identified in Schedule "A". Lessee shall operate such Locomotive in service on its railroad. If the Commencement Date for any Locomotive does not fall on the first day of the month, the first rental payment shall be prorated accordingly.

B. Payments past due for more than five (5) days shall bear interest at the rate of twelve percent (12%) per annum.

C. All rentals shall be paid to Lessor at:

National Railway Equipment Co.  
1473 Paysphere Circle  
Chicago, IL 60674

or at such other address as Lessor may direct in writing.

**4. TAXES**

Lessee shall pay all use, excise, ad valorem, stamp, documentary and similar taxes on or relating to this lease of the Locomotive, or the use, rental, maintenance, possession or operation Thereof by Lessee, and shall file any returns required therefor, and shall hold Lessor harmless against any liability and expense (including attorney fees and costs) on account of Lessee's failure to do the same.

## 7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER

- A. i. Lessee hereby acknowledges that Lessee has had or will have the opportunity to inspect the Locomotive prior to accepting delivery of same, and that acceptance of delivery of the Locomotive by Lessee constitutes acknowledgment that they have been received in good condition and repair.
- ii. Lessee shall not be responsible for any repairs or maintenance of the Locomotive (excepting for sand, fuel, water, oil and Locomotive fluids) during the term of this Lease except to the extent caused by the willful acts, misuse of the Locomotive or negligence of Lessee or as the result of acts of a third party while the Locomotive is in possession of Lessee.

B. Delivery to and acceptance of the Locomotive by, and execution of a Schedule with respect thereto by Lessee shall constitute Lessee's acknowledgment that the Locomotive is of the manufacture, design and utility; quality and capacity selected by the Lessee, that Lessee is satisfied that the same is suitable for Lessee's purpose. **LESSOR MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVE** and Lessor hereby disclaims all such representation and warranties. **LESSOR SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES.**

## 8. USE AND MAINTENANCE

Lessee agrees that:

A. Lessee shall be responsible and pay for all registrations, certificates, and permits, and all other similar requirements of governmental authorities, relating solely to the lease period hereunder whether required to be obtained in the name of the Lessor or Lessee.

B. The Locomotive shall be used and operated only by properly qualified, and trained personnel authorized by Lessee.

C. Lessee shall comply with all federal, state, municipal and local laws, ordinances, and rules, and regulations relating to the lease, possession, insuring, use and operation of the Locomotive during the lease period hereunder.

D. Lessee shall be solely responsible for the payment of any and all fines, penalties or forfeitures (including without limitation the confiscation of the Locomotive) levied upon or arising out of the use, operation, maintenance or insuring of the Locomotive during the lease period hereunder in violation of any law, ordinance, rule or regulation of any governmental authority.

E. Lessee shall pay all costs, expenses and charges incurred in connection with the lease, use and operation of the Locomotive during the Lease period hereunder.

F. Lessee shall maintain the Locomotive and in compliance with OEM specifications and safety rules and regulations now or hereafter promulgated by applicable governmental authorities.

E. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of the Locomotive is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessee's option provided Lessee is not then in default under the Lease) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Replacement Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer.

FE.. If Lessee shall fail to obtain or maintain the insurance coverage required in this lease, or shall fail to furnish Lessor with evidence thereof, Lessor at its option, may obtain such required insurance coverage on behalf of Lessee and Lessee's expense.

**10. ASSIGNMENT.** THIS LEASE HAS BEEN COLLATERALLY ASSIGNED BY LESSOR TO LASALLE BANK NATIONAL ASSOCIATION (the "Bank"). Lessee expressly agrees that Lessor shall remain liable under this Lease to perform all of the conditions and obligations provided herein to be observed and performed by it, and neither the collateral assignment of this Lease to Bank by Lessor nor any action taken pursuant to such assignment shall cause Bank to be under any obligation or liability in any respect to any party to this Lease, including, without limitation, Lessee, for the performance or observance of any of the representations, warranties, conditions, covenants, agreements or other terms of this Lease. Notwithstanding any provision to the contrary herein, this Lease may not be amended or modified without the prior written consent of Bank. Lessee will not sell, assign, sublet or otherwise encumber or permit a lien arising through Lessee to exist on or against any interest in this Lease or the Locomotive.

## **11. DEFAULT**

A. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default"):

- i. Default in the payment when due of any installment of rental hereunder or of any other obligation for the payment of money now or hereafter owed by Lessee to Lessor.
- ii. Default in the timely performance of any other liability, obligation, covenant or agreement hereunder of Lessee.

## **12. REMEDIES UPON DEFAULT**

A. Upon the occurrence of any Event of Default or at any time hereafter, Lessor, in its sole discretion, may take any one or more of the following actions with respect to the Locomotive:

- i. Declare all unpaid amounts of rental to be immediately due and payable.
- ii. Terminate the lease of the Locomotive by written notice to Lessee.
- iii. Whether or not the lease is terminated, take possession of the Locomotive wherever found, and for this purpose Lessor may at Lessor's option upon reasonable notice during normal business enter upon the premises where the Locomotive is located and take immediate possession of and remove the same.
- iv. Require that Lessee shall, upon written demand by Lessor and at Lessee's expense, promptly make available to Lessor at Lessee's expense, the Locomotive at the place designated for delivery upon expiration of this lease.
- v. Use, hold, sell, lease or otherwise dispose of the Locomotive as Lessor in its sole discretion may decide, without affecting the obligations of Lessee as provided in this Lease.
- vi. Sell or lease the Locomotive, at public or private sales or proceedings, at such time or times and upon such terms as Lessor may determine, free and clear of any rights of Lessee and, if notice thereof is required by applicable law, any notice in writing of any such sale or Lease by Lessor to Lessee not less than five (5) days prior to the date thereof shall constitute reasonable notice to Lessee.
- vii. Proceed by appropriate action either at law or in equity to recover damages for the breach thereof or to rescind the lease hereunder of any or all Locomotive.
- viii. Exercise any and all rights and remedies available to Lessor under any applicable law. In addition, Lessee shall be charged with and shall pay to Lessor all reasonable costs and expenses of Lessor incurred as a result of each Event of Default by Lessee.

B. None of the rights and remedies under or referred to in this paragraph is intended to be exclusive, but each such right or remedy shall be cumulative and may be availed of separately or concurrently with or in addition to any other right or remedy provided or referred to herein or otherwise available to Lessor at law or in equity. Any repossession or subsequent sale or lease by Lessor of the Locomotive shall not bar an action against lessee for a deficiency. To the extent permitted by applicable law,

**LESSEE WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF LOCOMOTIVE BY LESSOR AS A RESULT OF ANY EVENT OF DEFAULT HEREUNDER BY LESSEE.**

C. Without limitation of any rights of Lessor otherwise existing or otherwise available to Lessor, it is expressly covenanted and agreed by the parties hereto that in the event of any assignment by operation of law of this Lease or of any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease or any one or more leases hereunder.

### **13. RECORDATION OF LESSOR'S INTEREST**

Lessee agrees to execute all recording documents requested by Lessor to show Lessor's interest in the locomotive. Lessee further authorizes Lessor to execute and file financial statements or other documents evidencing Lessor's interest in the locomotive without Lessee's signature.

#### 14. MISCELLANEOUS

A. This Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Illinois.

B. Neither this Lease nor any schedule shall be amended, and no provision hereof or of any Schedule shall be waived or varied unless by a writing signed by the parties.

C. No delay or omission by Lessor in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by Lessor of any Event of Default by Lessee shall not be construed as a waiver of any future occasion.

D. In case any provision (or portions thereof) in this Lease shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions (or portions thereof) hereby shall not in any way be affected or impaired thereby.

E. This Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors.

F. All notices permitted or required to be given pursuant to this Lease shall be mailed by Certified or Registered Mail, Return Receipt Requested to the parties at the following addresses or at such other addresses as each party may notify the other.

If to Lessor: National Railway Equipment Co.  
14400 S. Robey  
Dixmoor, Illinois 60426

If to Lessee: Modesto & Empire Traction Company  
641 S. Mc Clure Road  
Modesto, CA 95353

**WITNESS WHEREOF**, the parties have executed this Lease the day and year first mentioned above.

**LESSOR:**

**NATIONAL RAILWAY EQUIPMENT CO.**

**BY:**

**NAME:** James M. Wurtz, Jr.

**TITLE:** Vice President

**LESSEE:**

**Modesto & Empire Traction Company**

**BY:**

**NAME:** Kennan H. Beard III

**TITLE:** Vice President

### **SCHEDULE "A"**

Attached to and incorporated into the Lease dated the 6 day of December, 2007 by and between the National Railway Equipment Co. (LESSOR) and Modesto & Empire Traction Company (LESSEE).

Type and General Description of Locomotive Unit, Marks and Numbers:

<b>UNIT NO.</b>	<b>TYPE</b>	<b>GENERAL DESCRIPTION</b>
NREX 2007	NREC	2GS-14B N-ViroMotive Switcher Locomotive

**LEASE  
TERM  
2 Weeks\***



## MEMORANDUM OF LEASE AGREEMENT

THIS MEMORANDUM OF LEASE AGREEMENT is made and entered into as of December 6, 2007, by and between NATIONAL RAILWAY EQUIPMENT CO. ("Lessor"), and Modesto & Empire Traction Company ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor, Locomotive model(s) described herein.

Each Locomotive is fully-described in a certain Lease Agreement dated as of \_\_\_\_\_, 2007, (together with all of the riders, schedules and other attachments thereto, collectively, the "Lease"), each between Lessor and Lessee. A Schedule of the equipment is attached hereto.

2. The Lease shall be effective as of the date hereof and shall be subject to the term specified in the Lease, and any extension of such term to the extent provided for in the Lease.

The Memorandum of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Memorandum of Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

### LESSEE:

**Modesto & Empire Traction Company**

By: 

Name: Kennan H. Beard III

Title: Vice President

### LESSOR:

**NATIONAL RAILWAY EQUIPMENT CO.**

By: 

Name: James M. Wurtz, Jr.

Title: Vice President

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_, the person who signed this instrument who acknowledged that (s) he is the \_\_\_\_\_ of \_\_\_\_\_ and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

\_\_\_\_\_  
Notary Public

[Seal]

My Commission Expires:  
\_\_\_\_\_

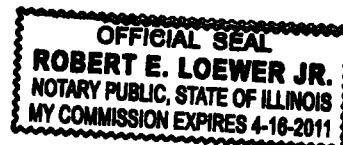
STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On this 6<sup>th</sup> day of December, 2007, before me appeared **James M. Wurtz Jr.**, the person who signed this instrument who acknowledged that (s) he is an officer of **NATIONAL RAILWAY EQUIPMENT CO.** and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

  
Notary Public

[Seal]

My Commission Expires:  
\_\_\_\_\_



## SCHEDULE OF EQUIPMENT

Lessor: NATIONAL RAILWAY EQUIPMENT CO.

Lessee: Modesto & Empire Traction Company

Approved by: Valbte  
(Lessee to initial each page)

Equipment Located at:

\_\_\_\_\_

Equipment Schedule No.: See Schedule "A"

Manufacturer and/or Vendor  
Name & Invoice Number

Equipment  
Description

National Railway Equipment Co.

NREC 2GS-14B N-ViroMotive Switcher  
Locomotive